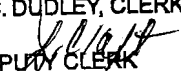


DEC 03 2010

JULIA C. DUDLEY, CLERK  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

ANTHONY HALL,	)	Civil Action No. 7:10-cv-00393
Plaintiff,	)	
	)	
v.	)	<u>MEMORANDUM OPINION</u>
	)	
MR. HOPKINS, <u>et al.</u> ,	)	By: Hon. James C. Turk
Defendants.	)	Senior United States District Judge

Anthony Hall, a Virginia inmate proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 with jurisdiction vested in 28 U.S.C. § 1343. Plaintiff names as defendants the Keen Mountain Correctional Center ("KMCC"), the Virginia Department of Corrections ("VDOC"), Health Services Provider's Keen Mountain Correctional Center ("Health Services"), several medical providers at the KMCC, and a correctional officer at the KMCC. Plaintiff complains that the medical care, or lack thereof, he received from the defendants at the KMCC violated the Eighth Amendment's protection against cruel and unusual punishment. This matter is presently before the court for screening, pursuant to 28 U.S.C. § 1915A. After reviewing plaintiff's submissions, I terminate the KMCC, the VDOC, and Health Services as defendants because plaintiff failed to state a claim against them.

The court must dismiss any action or claim filed by an inmate if the court determines that the action or claim is frivolous or fails to state a claim on which relief may be granted. See 28 U.S.C. §§ 1915(e)(2), 1915A(b)(1); 42 U.S.C. § 1997e(c). The first standard includes claims based upon "an indisputably meritless legal theory," "claims of infringement of a legal interest which clearly does not exist," or claims where the "factual contentions are clearly baseless." Neitzke v. Williams, 490 U.S. 319, 327 (1989). The second standard is the familiar standard for a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), accepting the plaintiff's

factual allegations as true. A complaint needs “a short and plain statement of the claim showing that the pleader is entitled to relief” and sufficient “[f]actual allegations . . . to raise a right to relief above the speculative level . . . .” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks omitted). A plaintiff’s basis for relief “requires more than labels and conclusions . . . .” Id. Therefore, the plaintiff must “allege facts sufficient to state all the elements of [the] claim.” Bass v. E.I. Dupont de Nemours & Co., 324 F.3d 761, 765 (4th Cir. 2003).


However, determining whether a complaint states a plausible claim for relief is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Ashcroft v. Iqbal, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1937, 1950 (May 18, 2009). Thus, a court screening a complaint under Rule 12(b)(6) can identify pleadings that are not entitled to an assumption of truth because they consist of no more than labels and conclusions. Id. Although the court liberally construes pro se complaints, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), the court does not act as the inmate’s advocate, sua sponte developing statutory and constitutional claims the inmate failed to clearly raise on the face of his complaint. See Brock v. Carroll, 107 F.3d 241, 243 (4th Cir. 1997) (Luttig, J., concurring); Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985). See also Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978) (recognizing that district courts are not expected to assume the role of advocate for the pro se plaintiff).

To state a claim under § 1983, a plaintiff must allege “the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988).

However, the KMCC, the VDOC, and Health Services are not “persons” subject to § 1983 liability. See Will v. Michigan Dep’t of State Police, 491 U.S. 58 (1989). See also FDIC v. Meyer, 510 U.S. 471, 486 (1994). Therefore, plaintiff fails to state a claim against these entities, and I terminate them as defendants to this action. Plaintiff’s claims against the natural defendants remain.

The Clerk is directed to send copies of this memorandum opinion and the accompanying order to the plaintiff.

**ENTER:** This 3rd day of December, 2010.

  
Senior United States District Judge